Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

Haywood Eudon Hall,

*Petitioner*,

v.

United States of America.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

Is commission of an overt act an element of the crime of conspiracy to commit money laundering under 18 U.S.C. 1956(h)?

## PARTIES TO THE PROCEEDINGS BELOW

In addition to the parties named in the caption, the following parties were indicted along with petitioner and were co-defendants in the proceedings below: Gerald Payne; Betty Payne; Patrick Talbert; and David Whitfield. Andrew J. Krishak and James R. Chambers were indicted with the above-named parties, but pleaded guilty and were therefore not co-defendants at trial. See Pet. App. 2a n.1.



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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Haywood Eudon Hall respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit, Pet. App. 1a-11a, is published at 349 F.3d 1320. The district court's amended judgment of conviction, Pet. App. 12a-26a, is unpublished.

## JURISDICTION

The judgment of the court of appeals was entered on November 10, 2003. Justice Kennedy subsequently extended the time to file this petition to and including March 10, 2004. App. No. 03-651. This Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

## RELEVANT STATUTORY PROVISION

18 U.S.C. 1956(h) provides:

> Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

## STATEMENT

Petitioner, who was acquitted of all ten counts of money laundering and unlawful monetary transactions with which he was charged, was nonetheless convicted under 18 U.S.C. 1956(h) for conspiracy to commit money laundering. Petitioner's conviction was in error: The government failed to allege any overt acts in furtherance of the conspiracy, and the judge refused, over petitioner's timely objection, to instruct the jury that commission of an overt act was necessary for conviction. On appeal, the Eleventh Circuit affirmed petitioner's conviction, holding that commission of an overt

act is not an element of section 1956(h). The court of appeals' decision wrongly disagreed with the five circuits that require proof of an overt act for conviction under section 1956(h) and sided instead with the two circuits holding that the statute has no overt act requirement.

1. Petitioner and six co-defendants were indicted in the Middle District of Florida in March 1999. Pet. App. 2a. Petitioner was named in Counts One to Seventeen of the twenty-count indictment for activities in connection with the Greater Ministries International ("GMI") "Faith Promises Program" ("investment program"). Indictment, Count One, ¶¶ 1-2. The Indictment described petitioner as a Director of GMI, and alleged that petitioner and his co-defendants "solicit[ed] victim investors to place money into the fraudulent investment program." Indictment, Count One, ¶¶ 5, 11.

Count One alleged a conspiracy to commit mail and wire fraud in violation of 18 U.S.C. 1341 and 1343, and conspiracy to transport property taken by fraud across state lines in violation of 18 U.S.C. 2314. It specifically alleged that petitioner attended a fundraising meeting in Philadelphia for the investment program on or about April 25, 1997 and that petitioner attended a similar meeting in Ohio on or about June 6, 1997. Indictment, Count One, ¶¶ 26(16), 26(18).

Count Two – the count in question here – alleged a conspiracy to commit money laundering in violation of 18 U.S.C. 1956(h). This Count incorporated by reference Count One's introductory material and the description of the "manner and means" by which the conspiracy was carried out. Indictment, Count Two, ¶¶ 1, 3. However, this Count conspicuously failed either to incorporate the overt acts set out in Count One or to allege any other overt acts in furtherance of the conspiracy, even though it was unclear under the precedents of this Court and the Eleventh Circuit whether commission of an overt act is an element of the crime under section 1956(h). See Pet. App. 5a.



The remainder of the indictment brought substantive charges against the defendants. Counts Three through Seven charged mail fraud based on five acts of mailing newsletters, statements of accounts, and U.S. currency to participants in the investment program. Counts Eight through Twelve charged money laundering offenses in violation of 18 U.S.C. 1956(a)(1)(A)(i) based on five check-cashing transactions. Finally, Counts Thirteen through Seventeen charged unlawful monetary transactions in violation of 18 U.S.C. 1957 based on five separate check-cashing transactions.

2. At the close of the evidence, counsel for petitioner asked the judge to instruct the jury that, to convict the defendants under section 1956(h), it was required to find an overt act in furtherance of the alleged money laundering conspiracy. The judge rejected this request, instead instructing the jury that the only two elements of money laundering conspiracy are "[f]irst, that two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the indictment; and [s]econd, that the defendant under consideration knowingly and willfully became a member of such conspiracy." Transcript 155.

The jury acquitted petitioner of Counts Three (substantive mail fraud) and Eight through Seventeen (substantive money laundering and unlawful monetary transactions). Pet. App. 13a. It convicted petitioner of Counts One (conspiracy to commit mail fraud), Two (conspiracy to commit money laundering), and Four, Six, and Seven (substantive mail fraud). *Id.* Petitioner was sentenced to 185 months in prison – including sixty-five months for money laundering conspiracy, *id.* 15a – and thirty-six months' supervised release, *id.* 17a.

3. Petitioner appealed his conviction to the Eleventh Circuit, claiming legal error in the failure to instruct the jury that commission of an overt act is an element of the offense

under section 1956(h).[1] The court of appeals found no error in the instructions, however. It began its analysis by noting, "[w]hile neither this Court nor the Supreme Court has determined whether commission of an overt act is an essential element of a conviction under § 1956(h), other circuits are split on the issue." Pet. App. 5a. Rather than siding with the five circuits that have held that section 1956(h) requires proof of an overt act, see *infra* at 6, the court below sided with the two that analogize section 1956(h) to 21 U.S.C. 846 – the drug conspiracy statute that this Court held in *United States* v. *Shabani*, 513 U.S. 10 (1994), requires no proof of an overt act. Pet. App. 6a-7a. On that basis, the court of appeals affirmed petitioner's conviction, concluding that "an overt act is not an essential element for conviction of conspiracy to commit money laundering." *Id.* 7a.

This petition followed.

## REASONS FOR GRANTING THE WRIT

There is an acknowledged circuit conflict over whether commission of an overt act is an element of the offense of conspiracy to commit money laundering under section 1956(h). This split, which has profound effects upon the consistent administration of criminal justice throughout the United States, will not resolve itself. Despite the conflict's ongoing importance, it has persisted throughout the ten years since this Court decided *United States* v. *Shabani* – the case on which the minority circuits rely – in part because there are few if any opportunities for the courts of appeals to revisit their prior precedents on the question.

Moreover, the Eleventh Circuit's decision is wrong on the merits. First, section 1956(h) was enacted solely to

[1] Petitioner also appealed his two-level sentencing enhancement under U.S.S.G. 3B1.3 for abusing a position of trust. The court of appeals agreed that the enhancement was in error, and remanded the case to the trial court for resentencing. Pet. App. 11a. That issue is not presented in this petition.



increase the penalties for money laundering conspiracy beyond those authorized by the general federal conspiracy statute, 18 U.S.C. 371. Section 371 provided for a five-year maximum sentence and required commission of an overt act as an element of the offense. Congress merely intended for section 1956(h) to increase the maximum penalty for money laundering conspiracies to twenty years – the same sentence authorized under 18 U.S.C. 1956 for substantive money laundering offenses; Congress had no intent to remove the overt act requirement that had always been an element of the crime. Second, the specific reference to commission of overt acts in section 1956(i)'s venue provisions, added in 2001, illustrates that Congress still considers overt acts to be an important element of money laundering conspiracy.

This Court has a "normal practice" of remanding cases to the court of appeals, after determining that something is an element of a crime, so that the lower court may "consider in the first instance whether the jury-instruction error was harmless." *Neder* v *United States*, 527 U.S. 1, 25 (1999). As in *Neder*, in which this Court remanded to the court of appeals for a harmless error analysis after determining that materiality is an element of federal mail, wire, and bank fraud offenses, this case should be remanded to the Eleventh Circuit for harmless error analysis in light of the fact that commission of an overt act is an element of the crime of conspiracy to commit money laundering.

### I. The Courts of Appeals Are Intractably Divided Over the Question Presented.

The Eleventh Circuit acknowledged a conflict among the circuits regarding the elements required for conviction under 18 U.S.C. 1956(h). Pet. App. 5a. The conflict is even deeper than the court of appeals recognized. Five circuits – the Third, Fifth, Sixth, Seventh, and Eighth – hold that to sustain a conviction under section 1956(h), a jury must find beyond a reasonable doubt that an overt act was committed in furtherance of the alleged conspiracy. See, *e.g.*, *United States*

v. *Evans*, 272 F.3d 1069, 1082 (CA8 2001), *reh'g en banc denied* (2002) (stating that "the government must establish that [the defendant] knowingly joined a conspiracy to launder money and that one of the conspirators committed *an overt act in furtherance of that conspiracy*") (citations omitted) (emphasis added); *United States* v. *Wilson*, 249 F.3d 366, 379 (CA5 2001) (listing the elements as "1) there was an agreement between two or more persons to launder money; 2) the defendant voluntarily agreed to join the conspiracy; and 3) one of the persons committed *an overt act in furtherance of the conspiracy*") (citations omitted) (emphasis added); *United States* v. *Ross*, 190 F.3d 446, 450 (CA6 1999) (stating that the government must prove "the alleged conspiracy existed, the defendant willfully became a member, and one of the conspirators knowingly committed *at least one alleged overt act in furtherance of some object or purpose of the conspiracy*") (citations omitted) (emphasis added); *United States* v. *Navarro*, 145 F.3d 580, 593 (CA3 1998) (stating that a 1956(h) charge "requires the government to establish (1) a conspiracy to launder money was entered into by two or more people; (2) one of the conspirators committed *an overt act in furtherance of the conspiracy*; (3) the defendant knew the purpose of the conspiracy; and (4) the defendant deliberately joined the conspiracy") (citation omitted) (emphasis added); *United States* v. *Emerson*, 128 F.3d 557, 561 (CA7 1997) (stating that the government "needed to show that there was an agreement between two or more people to launder money, that [the defendant] was a party to the agreement, and that one of the conspirators committed *an overt act in furtherance of the agreement*") (citations omitted) (emphasis added).[2]

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[2] Additionally, the Tenth Circuit has indicated in two unpublished opinions that it, too, would require proof of an overt act for a conviction under section 1956(h). See *United States* v. *Hand*, 1995 U.S. App. LEXIS 35321, at *6 (CA10 1995) (stating the elements as "(1) the existence of an agreement; (2) to break the law; *(3) an overt act; (4) in furtherance of the conspiracy's object;* and (5) that a defendant willfully entered the conspiracy") (citations omitted) (emphasis added); *United States* v. *Olson*, 1995 U.S. App. LEXIS 35320, at *5 (CA10 1995) (same). Though unpublished opinions of the Tenth Circuit have only limited precedential value, see 10th Cir. R. 36.3, district courts within the Tenth Circuit have nonetheless relied upon these opinions as an indication of the Tenth Circuit's position on this disputed point of law. See *United States* v. *Cline*, 2002 U.S. Dist. LEXIS 10001, at *11-*15 (D. Kan. 2002) ("The court is persuaded that the Tenth Circuit, as it has indicated in the unpublished opinions of *Olson* and *Hand*, would hold that an overt act is an essential element for a violation of 18 U.S.C. § 1956(h).").



In contrast, three circuits – the Fourth, Ninth, and now Eleventh – allow a conviction to stand without the government even having to charge an overt act in the indictment. See Pet. App. 7a ("[W]e find that an overt act is not an essential element for conviction of conspiracy to commit money laundering."); *United States* v. *Bolden*, 325 F.3d 471, 491 (CA4 2003) ("[Section] 1956(h) does not require an overt act to be either alleged or proven."); *United States* v. *Tam*, 240 F.3d 797, 801 (CA9 2001) ("Defendants * * * also assert that the district court erred in finding that the money laundering conspiracy statute does not require the indictment to allege an overt act. This was not error.").

This Court's 1994 opinion in *United States* v. *Shabani*, 513 U.S. 10 (1994), did not resolve the circuit split. See *supra* (citing cases from five circuits post-dating *Shabani*). In *Shabani*, this Court interpreted the drug conspiracy statute, 21 U.S.C. 846, to have no overt act requirement. *Shabani*, 513 U.S. at 17. Although the conspiracy provisions in sections 1956(h) and 846 contain parallel language, the statutes otherwise differ significantly in both their express provisions and their histories. It is therefore not surprising that since this Court decided *Shabani*, the courts of appeals have continued to rely upon their pre-*Shabani* precedents in interpreting

section 1956(h). See, *e.g.*, *Ross*, 190 F.3d at 450 (citing *United States* v. *Lee*, 991 F.2d 343, 347-48 (CA6 1993)); *Navarro*, 145 F.3d at 593 (citing *United States* v. *Conley*, 37 F.3d 970, 976-77 (CA3 1994)); *United States* v. *Hildebrand*, 152 F.3d 756, 762 (CA8 1998) (citing *Conley*, 37 F.3d at 976-77); *Emerson*, 128 F.3d at 561 (citing *United States* v. *Santos*, 20 F.3d 280, 283 (CA7 1994)).

This Court's intervention is required because the circuit conflict is intractable. Once a circuit has established precedent regarding the elements of section 1956(h), future cases are litigated in such a way that the courts in that circuit will rarely have an opportunity to reconsider that precedent. Indeed, petitioner's case only presents this important issue so squarely because the Eleventh Circuit was one of the few remaining courts of appeals that had not yet decided the question presented.

In any of the five circuits that require proof of an overt act for a conviction under section 1956(h), the defendant will of course never challenge the rule, and it would be exceedingly difficult for the government to be in a position to raise such a challenge itself. Since the government cannot appeal a jury acquittal, *United States* v. *Scott*, 437 U.S. 82, 91 (1978), the only postures in which the government might conceivably be in a position to appeal would be after either the dismissal of an indictment, see 18 U.S.C. 3731, or an exceedingly rare judicial acquittal following a guilty verdict from the jury, *United States* v. *Wilson*, 420 U.S. 332, 344-45, 352-53 (1975). For either situation to arise, however, the government would either have had to disregard clear circuit precedent by proceeding on an indictment that failed to charge an overt act – a patently self-defeating strategy – or would have had to charge an overt act without having a sufficient quantum of proof to support a conviction. Either of these would be a violation of the government's stated policy not to charge when "the prosecutor has a good faith doubt, for legal or evidentiary reasons, as to the Government's ability to readily prove a charge at trial." Memorandum from John



Ashcroft, Attorney General, to All Federal Prosecutors, Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing 2 (Sept. 22, 2003) ("Justice Department Policy Memorandum").

Conversely, in any of the three circuits that do *not* require proof of an overt act to sustain a conviction under section 1956(h), it would never be to the *government's* advantage to challenge the rule. But rarely will it be in the defendant's best interests to do so, either. If the government is not in position to prove the other elements of section 1956(h) beyond a reasonable doubt, the defendant will be acquitted, obviating the need for any appeal. If the government *is* in a position to prove these other elements, the defendant will likely follow the path taken by 96.6% of all criminal defendants and simply plead guilty (*see* U.S. Sentencing Comm'n, Sourcebook of Federal Sentencing Statistics, 2001 Fiscal Year, at 20, fig. C), rather than risk harsher punishment in order to mount a quixotic challenge to well-established circuit law.

By virtue of the fact that the Eleventh Circuit did not have a rule in place at the time petitioner was charged, he was in position to raise this issue at trial, focus upon it in his appeal, and preserve it for this Court's resolution. As the number of circuits in which this would happen is fast decreasing, and because the number of jurisdictions affected by the split grows ever wider, principles of sound judicial administration counsel strongly in favor of granting certiorari now.

## II. The Circuit Conflict Is Untenable Given the Importance of the Question Presented.

The importance of the conflict over whether 18 U.S.C. 1956(h) includes an overt act as an element of money laundering conspiracy merits this Court's attention. Sections 1956 and 1957 are very commonly charged statutes: In 2002 alone, a violation of one of these sections constituted the most serious count in the indictment of over 1300 federal criminal

defendants. See Federal Justice Statistics Resource Center, *at* http://fjsrc.urban.org/index.cfm. A conflict among the circuits as to the elements of conspiracy to commit one of these offenses effectively turns a single federal conspiracy statute into two distinct crimes, with the fate of similarly situated defendants regarding a potential twenty-year prison sentence dependent only upon geography.

"Much turns on the determination that a fact is an element of an offense * * * given that elements must be charged in the indictment, submitted to a jury, and proven by the Government beyond a reasonable doubt." *Jones* v. *United States*, 526 U.S. 227, 232 (1999). This circuit split thus plays itself out at all stages of the criminal justice system, from the charging decision, through the indictment, all the way to final judgment and sentencing.

At the inception of criminal proceedings, prosecutors in different circuits will make different decisions about whether to charge a potential defendant with a violation of section 1956(h). It is the policy of the Department of Justice that, except in very limited circumstances, "federal prosecutors must charge and pursue the most serious, readily provable offense or offenses that are supported by the facts of the case." See Justice Department Policy Memorandum, *supra*, at 2. When presented with a case in which there is no evidence of an overt act in furtherance of a money laundering conspiracy, adherence to this policy will create a different result depending upon the circuit law governing the United States Attorney's Office in question. In one of the three circuits that does not treat commission of an overt act as an element of conspiracy to commit money laundering, the United States Attorney is required to charge a violation of section 1956(h). In one of the five circuits with an overt act requirement, the defendant cannot, and will not, be charged under section 1956(h).

Additionally, a grand jury indictment that is sufficient in one circuit will be insufficient in another. To be sufficient, an



indictment must include "such a statement of the facts and circumstances as will inform the accused of the specific offence, coming under the general description, with which he is charged." *Hamling* v. *United States*, 418 U.S. 87, 117-18 (1974). Had petitioner been indicted in a circuit in which the governing law requires proof of an overt act, his indictment would have been subject to dismissal for failing even to allege that such an act had been committed. See, *e.g.*, *United States* v. *Cline*, 2002 U.S. Dist. LEXIS 10001, at *11-*15 (D. Kan. 2002) (dismissing an indictment under section 1956(h) for failure to allege an overt act).

Further, as this case starkly demonstrates, juries in different circuits will be instructed to consider the same set of facts differently for the purposes of determining a defendant's guilt or innocence. While it is true throughout the country that "[t]he Constitution requires a criminal conviction to rest upon a jury determination that the defendant is guilty of every element of the crime of which he is charged beyond a reasonable doubt," *Old Chief* v. *United States*, 519 U.S. 172, 199 (1997), this constitutional directive cannot be implemented uniformly when circuits disagree as to the elements of the underlying offense. Here, despite petitioner's timely objection, the overt act element was not included in the jury instructions. Thus, although in five other circuits the Constitution would require that the overt act element be "submitted to the jury" and "proven by the Government beyond a reasonable doubt," *Jones*, 526 U.S. at 232, those rights were denied to petitioner here.

The ultimate effect of the split will be to impose drastically different sentences upon individuals whose underlying conduct is identical. If convicted under section 1956(h), an offense with which he could not even have been *charged* in five circuits, a defendant in one of the three minority circuits faces a prison sentence of up to twenty years. 18 U.S.C. 1956(a). The conspiracy sentence can, and likely will, be consecutive to any other sentence he might receive for the underlying conduct. See *Callanan* v. *United*

*States*, 364 U.S. 587, 593-94 (1961). Petitioner, for example, had his sentence extended by sixty-five months simply because he had the misfortune to be charged in the Eleventh Circuit. Pet. App. 15a.

The fact that similarly situated criminal defendants receive disparate treatment at all stages of the criminal justice system due solely to their geography underscores the need for this Court to provide consistency to the interpretation of the federal criminal code.

## III. In Adopting Section 1956(h), Congress Did Not Intend to End the Long-Standing Rule That an Overt Act Is Required For a Conviction of Money Laundering Conspiracy.

As five courts of appeals properly recognize, there is an overt act requirement for conspiracy to commit money laundering under 18 U.S.C. 1956(h). Congress enacted subsection (h) in 1992, but the crime of money laundering under sections 1956 and 1957 had existed for six years before that enactment. Conspiracy to commit money laundering was previously charged under 18 U.S.C. 371, the general conspiracy statute, which requires an overt act as an element of the offense. *Grunewald* v. *United States*, 353 U.S. 391, 396 (1956). The purpose of inserting subsection (h) was not to change the definition of money laundering conspiracy by omitting the overt act requirement, but rather to increase the maximum punishment for that offense from five years' imprisonment under section 371 to twenty years, the same penalty as that authorized for the substantive offense of money laundering. Compare 18 U.S.C. 371 (defining a five-year maximum sentence) with 18 U.S.C. 1956(a) (defining a twenty-year maximum sentence).

If Congress had indeed intended to remove the overt act requirement from the definition of money laundering conspiracy, it would have used more precise language. At the time that Congress adopted subsection (h), the language it used in the provision was *not* regarded by lower courts that



had considered the issue as clearly eliminating any requirement of an overt act. See *United States* v. *Stodola*, 953 F.2d 266, 272 (CA7 1992) (including overt act among 18 U.S.C. 1951 elements), cert. denied, 506 U.S. 834 (1992); *United States* v. *Villarreal*, 764 F.2d 1048, 1051 (CA5 1985) (same), cert. denied, 474 U.S. 904 (1985); *United States* v. *Magana-Olvera*, 917 F.2d 401, 409 (CA9 1990) (including overt act among 21 U.S.C. 846 elements).

The legislative history bears out the conclusion that the sole purpose of section 1956(h) was to increase punishment. Section 1956(h) does not abandon the requirement – which has existed since the time that the money laundering offense was created in 1986 – of an overt act for conviction. The conference report regarding the adoption of section 1956(h) sets forth as its exclusive purpose to "increase[] the penalty for the offense of conspiracy to commit money laundering under 19 [sic] U.S.C. 1956 or 1957 to the penalty for the substantive money laundering offense." Conference Report, 138 Cong. Rec. S17904. For this reason, the original House Resolution actually placed the new punishment provision in 18 U.S.C. 371. See H.R. 26, 102d Cong. (1st Sess. 1991).

To be sure, two years after Congress enacted section 1956(h), this Court held in *Shabani* that similar language in 21 U.S.C. 846 does not require proof of an overt act. But the context of section 1956(h) is sufficiently distinct that this Court should not retrospectively read the overt act requirement out of section 1956(h). See *Crandon* v. *United States*, 494 U.S. 152, 158 (1990) (stating that to interpret a statutory provision, the Court should "look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy").

*First*, the background overt act requirements before the statutes were passed were entirely different. Before 21 U.S.C. 846 created a separate crime of drug trafficking conspiracy, there was no overt act requirement for similar drug-related conspiracies. See 21 U.S.C. 174, 176a (repealed

by 84 Stat. 1291 (1970)). In contrast, before 18 U.S.C. 1956(h) was passed, there was an overt act requirement for money laundering conspiracy under 18 U.S.C. 371. Thus, while the Court in *Shabani* held that 21 U.S.C. 846 did not add an overt act element, there is nothing to suggest that the similar language in 18 U.S.C. 1956(h) would actually remove the element when it previously existed.[3] Such an interpretation would be inconsistent with the intent of Congress, which was simply to enhance the possible punishment for a particular kind of criminal conspiracy.

*Second*, unlike section 846, the venue provision of 18 U.S.C. 1956 explicitly makes reference to overt acts. Specifically, a prosecution for money laundering conspiracy may be brought "in the district where venue would lie for the completed offense under paragraph (1), or in any other district where *an act in furtherance of the * * * conspiracy* took place." See 18 U.S.C. 1956(i)(2) (emphasis added). The addition of this venue provision in 2001 illustrates that Congress still assumes the existence of an overt act for money laundering conspiracy.

The reference to overt acts in section 1956(i) means that in cases in which there were no overt acts in furtherance of the conspiracy, it may be unclear whether venue is proper in *any* district. To establish proper venue without alleging any overt acts, the government would have to establish the judicial district in which the conspirators planned to engage in transactions with the funds, or the district in which the conspirators engaged in the illegal activity that generated the funds. See 18 U.S.C. 1956(i)(1); *United States* v. *Cabrales*, 524 U.S. 1, 6-9 (1998) (holding that in money laundering

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[3] Also of note is the fact that the legislative history behind 21 U.S.C. 846 shows that the goal was not to add punishment for an existing crime, but to make it so that "[a] conspiracy to commit violations of [certain existing drug laws] would be considered a specific offense." H.R. REP. NO. 82-635 (1951); S. REP. NO. 82-1051 (1951) (accepting and reproducing House report).



conspiracy case, venue is improper where the funds were unlawfully generated, unless the defendant is involved in the offense that generated the funds). Congress could have dispensed with this problem by allowing venue in the district where the agreement to launder money occurred. See *Hyde* v. *United States*, 225 U.S. 347 (1912) (allowing venue in conspiracy cases in the district where the agreement took place or where any overt acts occurred). The logical conclusion is that Congress provided for venue in the district where overt acts occurred – and not in the district where the agreement was reached – because Congress assumed that there would always be overt acts alleged for a charge of money laundering conspiracy.

*Third*, money laundering and drug trafficking differ in relevant respects. Money laundering necessarily involves a predicate crime that taints the funds involved. See 18 U.S.C. 1956(a). But the "laundering" can simply be any financial transaction that intends to promote or conceal the illegal activity, see *id.* § 1956(a)(1), or any monetary transaction with over $10,000 in illegal funds, see *id.* § 1957(a). And a "financial transaction" can be any transfer of funds that affects interstate commerce in any way. See *id.* § 1957. As a result, if conspiracy to commit money laundering has no overt act requirement, the conspiracy provision will be violated by virtually any money-related crime that involves a discussion of what to do with the funds. See, *e.g.*, *United States* v. *Conley*, 37 F.3d 970, 976-77 (CA3 1994) (noting that the agreement need only be an "understanding"). As a practical matter, conspiracy to commit money laundering would function as a lesser-included offense of conspiracy to commit the predicate offense, yet a defendant could be convicted of both conspiracies, and receive an additional twenty years in prison as a result. Moreover, in a case in which the predicate crime and the money laundering were planned at the same time, but no overt act was committed, a defendant might be guilty of conspiracy to commit money laundering, yet innocent of conspiracy to commit the predicate offense, since

conviction of the latter conspiracy would likely require an overt act under 18 U.S.C. 371. There is no evidence that Congress intended such an anomalous result.

*Finally*, the rule of lenity requires that doubts about section 1956(h) be interpreted in favor of the defendant. See *Moskal* v. *United States*, 498 U.S. 103, 108 (1990) (stating that a criminal statute must be narrowly construed if "reasonable doubt persists about a statute's intended scope even *after* resort to the language and structure, legislative history, and motivating policies of the statute") (internal quotation marks omitted); *Crandon*, 494 U.S. at 158. There are, at the very least, doubts here because (i) there is no clear statement in the statute or legislative history that Congress intended to eliminate the overt act requirement, which was an element of money laundering conspiracy under section 371; (ii) the language used in section 1956(h) was inconsistently interpreted at the time of its adoption; (iii) the venue provision of section 1956 specifically contemplates the existence of overt acts; and (iv) an overt act requirement is particularly important in the context of money laundering conspiracy. Accordingly, the ambiguity in section 1956(h) should be interpreted to require an overt act.



## CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully Submitted,

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March 10, 2004[4]

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[4] Counsel for petitioners were principally assisted by the following students in the Stanford Law School Supreme Court Litigation Clinic: Michael P. Abate, David M. Cooper, Eric J. Feigin, and Nicola J. Mrazek. Clinic members William B. Adams, Daniel S. Goldman, and Jennifer J. Thomas also contributed.

# APPENDICES

**APPENDIX A**

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-14746

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

*v.*

HAYWOOD EUDON HALL, A.K.A. DON HALL, DEFENDANT-APPELLANT

Argued and Submitted:
Opinion Filed: Nov. 10, 2003

Appeal from the United States District Court for the Middle District of Florida;
James D. Whittlemore, District Judge, Presiding, D.C. No. 99-00078-CR-T-25F

Before BLACK and FAY, Circuit Judges, and HUCK,* District Judge.

Opinion by Judge FAY.

## OPINION

FAY, Circuit Judge.

In March 1999, Defendant, Haywood Eudon Hall ("Hall"), was charged in 17 counts of a 20 count indictment along with six co-defendants.[1] The government alleged that Hall and the co-defendants, as principals in Greater Ministries International Church (GMIC), managed and promoted a fraudulent investment scheme. Hall was subsequently convicted of five counts: mail fraud conspiracy, money laundering conspiracy, and three counts of mail fraud. In this appeal he raises various challenges to both his convictions and sentencing. Hall first argues that the district court erred in not requiring the jury to find proof of an overt act to support his conviction for conspiracy to commit money laundering under 18 U.S.C. § 1956(h). Since we find that proof of an overt act is not an essential element under § 1956(h), we affirm Hall's money laundering conspiracy conviction. Hall also claims that the district court erroneously

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* Honorable Paul C. Huck, United States District Judge for the Southern District of Florida, sitting by designation.

[1] Two co-defendants, James R. Chambers and Andrew J. Krishak, accepted plea agreements for their role in the crime. The other four co-defendants, Gerald Payne, Betty Payne, David Whitfield, and Patrick Talbert, were found guilty on all counts charged against them (except that Count Five was dismissed with respect to all defendants on a motion for judgment of acquittal). These four defendants appeal their convictions and sentences on various grounds, and some have also adopted issues raised by co-defendants; however, we find no merit to any of the issues not discussed in this opinion and they do not warrant discussion.



applied a two-level increase to his sentence pursuant to U.S.S.G. § 3B1.3 for abuse of position of trust due to his status as a pastor. We conclude that Hall did not occupy a position of trust under the Sentencing Guidelines, and therefore reverse this sentence enhancement.[2]

In early 1996, Hall joined GMIC as a director and pastor of the church, and also became head of its World Missions program. When Hall came to GMIC, he became involved in the "gifting" program that had been started by one of the co-defendants, Gerald Payne. Though the name of the program changed from the "Double Your Money Program," to the "Double Your Blessings Program," and finally to the "Faith Promises Program," the gifting program remained essentially the same throughout its life. Under the program, investors would "gift" money to GMIC in increments of $250 and within 17 months the "giftors" were to get back double their money in the form of "giftbacks."

Hall and some of the other defendants held "roadshow" meetings across the country to promote the program. Despite using religious rhetoric to encourage participation in the program, the main focus of the meetings was on how much money could be made. Although there were disclaimers on the "gifting forms" stating that there were no guarantees of a return, the defendants expressly or impliedly promised giftbacks. The defendants told the giftors that profits were generated through investments in mining for precious metals and gems, in offshore commodities and drilling, and in overseas banks that paid high interest rates. Aside from being led to believe that they would get back double their money, potential investors were also told that some of the profits generated would go to feed the homeless, rehabilitate drug addicts, and support missionaries.

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[2] We are aware that Hall argues the government failed to present sufficient evidence to support any of his convictions and that he has also adopted issues raised by co-defendants; however, we find no merit in any of these issues and they do not warrant discussion.

However, GMIC never had any of the assets the defendants claimed to be investing in. There is no record of GMIC or any one of the defendants having gold, silver, or diamond mines in the United States from 1978 to the present. In addition, the diamond and gold mines GMIC was supposed to be operating in Liberia never did fully get off the ground. Although a diamond mine there produced tiny industrial grade diamonds of little value, the gold mines were never even operational. GMIC, however, did buy gold and silver and then had a company mint gold and silver medallions with the GMIC logo on them in order to promote the gifting program to potential giftors and to appease already dissatisfied investors.

Furthermore, the GMIC office supposedly located in the Cayman Islands never existed. Similarly, the Greater International Bank of Nauru was merely a storefront inside GMIC's Tampa building. No money was ever deposited into the Bank of Nauru, as giftbacks were deposited purely on paper by the giftors through couriers. Giftors were encouraged to make their gifts through these courier services, and this made it especially easy for already participating investors to "re-gift" their giftbacks, or deposit them in this "offshore bank," without ever seeing the cash, thus allowing the defendants to perpetrate their fraud. If a giftor, however, still wanted to withdraw money from his account, the bank representative, a GMIC gospel singer, would have to go directly to Defendant Payne to get money or gold.

Notwithstanding the defendants' promises of large amounts of money, many investors received little or no return on their gifts. When giftors inquired about their money, the defendants employed stalling techniques. Moreover, despite the defendants' claims that giftors' investments were going to charity, only about one percent of this money went to charitable purposes. In contrast, each director received monthly "gas money," which was a five percent commission of all money gifted or re-gifted by an investor recruited by that director. All gas money was paid in cash by Defendant



Payne, and over the course of the fraud, Hall received more than $539,000 of this money.

II.

Hall first claims that the district court erred in refusing to instruct the jury that proof of an overt act was necessary to convict him under 18 U.S.C. § 1956(h) for conspiracy to commit money laundering. Although this Court reviews a refusal to give a requested jury instruction for abuse of discretion, *United States v. Condon*, 132 F.3d 653, 656 (11th Cir.1998), if the refusal was based on an error of law, then it is by definition an abuse of discretion. *United States v. Govan*, 293 F.3d 1248, 1250 (11th Cir.2002). While neither this Court nor the Supreme Court has determined whether commission of an overt act is an essential element of a conviction under § 1956(h), other circuits are split on the issue. *See United States v. Godwin*, 272 F.3d 659, 669 n. 9 (4th Cir.2001) (noting that 18 U.S.C. § 1956(h) does not explicitly require proof of an overt act); *United States v. Tam*, 240 F.3d 797, 802 (9th Cir.2001) (finding that § 1956(h) does not require the indictment to allege an overt act). *But see United States v. Wilson*, 249 F.3d 366, 379 (5th Cir.2001) (finding proof of an overt act is required for a conviction under § 1956(h)); *United States v. Hildebrand*, 152 F.3d 756, 762 (8th Cir.1998) (finding that § 1956(h) requires proof of an overt act for conviction).

Those circuit courts that have found § 1956(h) to require proof of an overt act have relied on case law interpreting the general conspiracy statute of 18 U.S.C. § 371. *See Wilson*, 249 F.3d at 379; *Hildebrand*, 152 F.3d at 762. Section 371 provides:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and

> one or more of such persons *do any act to effect the object of the conspiracy*, each shall be fined under this title or imprisoned not more than five years, or both.

18 U.S.C. § 371 (emphasis added). It is important to note that § 371 expressly requires proof of an overt act in furtherance of the conspiracy to establish violation of the statute. However, the money laundering conspiracy statute, 18 U.S.C. § 1956(h), does not contain this express language:

> Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

18 U.S.C. § 1956(h). In this respect, the language of § 1956(h) is not like § 371, but instead is nearly identical to the drug conspiracy statute, 21 U.S.C. § 846. *See Tam*, 240 F.3d at 802; *United States v. Threadgill*, 172 F.3d 357, 366 n. 5 (5th Cir.1999). Section 846 provides:

> Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

21 U.S.C. § 846. The Supreme Court, recognizing that the language of § 846 does not call for an overt act, refused to infer an overt act requirement into the statute. *United States v. Shabani*, 513 U.S. 10, 13, 115 S.Ct. 382, 130 L.Ed.2d 225 (1994). In reaching this conclusion, the Supreme Court compared the language of 21 U.S.C. § 846 to that of 18 U.S.C. § 371:



> [W]e find it instructive that the general conspiracy statute, 18 U.S.C. § 371, contains an explicit requirement that a conspirator "do any act to effect the object of the conspiracy." In light of this additional element in the general conspiracy statute, Congress' silence in § 846 speaks volumes.

*Id.* at 14, 115 S.Ct. 382. Since the language of the statute at issue here, 18 U.S.C. § 1956(h), is nearly identical to 21 U.S.C. § 846, we are compelled to follow the Supreme Court's reasoning in *Shabani*. Given the absence of any language in § 1956(h) requiring proof of an overt act, we find that an overt act is not an essential element for conviction of conspiracy to commit money laundering. Accordingly, the jury instructions approved by the district court were indeed proper.

## III.

Hall next contends that the district court erroneously enhanced his sentence under U.S.S.G. § 3B1.3 for abuse of position of trust due to his status as a pastor. Pursuant to the Sentencing Guidelines, this two-level increase is appropriate "[i]f the defendant abused a position of public or private trust, ... in a manner that significantly facilitated the commission or concealment of the offense." U.S.S.G. § 3B1.3. In order for the district court to have applied this increase, two elements must have been established: (1) that the defendant occupied a position of public or private trust; and (2) that the defendant abused that position in a significant way to facilitate the commission or concealment of the offense. *United States v. Garrison*, 133 F.3d 831, 837 (11th Cir.1998). "We review the district court's fact findings for clear error, but its determination whether the facts justify an abuse-of- trust enhancement we review de novo." *United States v. Ward*,

222 F.3d 909, 911 (11th Cir.2000) (quotation marks and citation omitted). Although we accept the district court's finding of fact with regard to Hall's status as a pastor, we conclude that this fact alone is insufficient to support a determination that Hall occupied a position of trust with respect to the victims.

In finding that Hall's status as a pastor put him in a position of trust, the district court did not indicate whether it found Hall to have occupied a position of public trust or of private trust. Nevertheless, it is of no consequence as to whether we analyze this as a private or public trust, for we find the evidence in the record to be insufficient to support a finding that the relationships, if any, between Hall and the victims were of the type to put Hall in any position of trust under the Sentencing Guidelines. Within the context of fraud, this Court has found a position of trust to exist in two instances: "(1) where the defendant steals from his employer, using his position in the company to facilitate the offense, and (2) where a fiduciary or personal trust relationship exists with other entities, and the defendant takes advantage of the relationship to perpetrate or conceal the offense." *Garrison*, 133 F.3d at 837-38 (quotations omitted). This case can only fall within the second situation. However, since the government does not allege the existence of a fiduciary relationship, to conclude that Hall occupied a position of trust we must find a "personal trust relationship" between Hall and the victims.

Hall's status as a pastor does not necessarily create a personal trust relationship between himself and the victims.[3]

[3] The district court cites the Seventh Circuit case, *United States v. Lilly*, 37 F.3d 1222 (7th Cir.1994), as being instructive in determining that Hall occupied a position of trust by virtue of his status as a pastor. Although *Lilly* dealt with an investment fraud scheme by a pastor, the *Lilly* court specifically found that "regardless of the position Pastor Lilly held with respect to the non-Church member investors, the Pastor undoubtedly held a position of trust within the Church." *Id.* at 1227. However, since all the victims presented by the government in this case were non-church



*See United States v. Morris*, 286 F.3d 1291, 1297 (11th Cir.2002). *See also United States v. Caplinger*, 339 F.3d 226, 236-38 (4th Cir.2003) (finding that defendant's representation as a physician did not by itself mean he occupied a position of trust). In *Morris*, though the defendant was represented as an attorney to investors in an investment fraud scheme, he was found not to have abused a position of trust. *See id.* at 1296-97. This Court explained:

> [I]t simply is not the case that an attorney holds a position of trust with respect to all people with whom he comes into contact solely by virtue of his status as an attorney. Morris did not have an attorney-client relationship with any of the victims. Although Morris' status as an attorney may have been used to develop the trust of the victims, there are no facts to support the conclusion that as an attorney Morris occupied a position of trust in relation to these victims.

*Id.* at 1297. As in *Morris*, the government concedes that there is no evidence in the record indicating that Hall had a pastor-clergy relationship with any of the victims. Although Hall may have used his status as a pastor to develop the trust of investors, this does not demonstrate that Hall created a personal trust relationship with any of the victims. The government claims that evidence of Hall espousing religious rhetoric at the roadshow meetings is sufficient to establish this relationship. However, we must be careful to "distinguish between those arms-length commercial relationships where trust is created by the defendant's personality or the victim's credulity, and relationships in which the victim's trust is based on defendant's position in the

member investors, the district court's reliance on *Lilly* is misplaced.

transaction." *Garrison*, 133 F.3d at 838 (citations omitted). Since Hall and the other elders traveled across the country, these meetings were not regularly held in one locality, and listening to a meeting over the course of a few hours is not enough to establish the type of relationship contemplated by the Sentencing Guidelines. The government attempts to equate Hall's speeches at these meetings with the type of preaching a pastor engages in with members of his church at regular church services. These roadshow meetings, however, were not regular church services, and the government concedes that there is no evidence in the record to indicate Hall preached about the gifting program to victims at regular church services where he presided as a pastor.

Most importantly, in determining whether Hall occupied a position of trust, we must focus on the relationship between Hall and the victims from the perspective of the victims. *Garrison*, 133 F.3d at 837. Thus, Hall's status as a pastor and his involvement in the roadshows are only as significant as the victims indicate. It was the government's burden during sentencing, to show, by a preponderance of the evidence, that Hall occupied a position of trust with respect to his victims. *See United States v. Kummer*, 89 F.3d 1536, 1545 (11th Cir.1996). However, instead of presenting any evidence to indicate that there was in fact a personal trust relationship between Hall and even one victim, the government relied solely on Hall's status as a pastor. During trial, the government called multiple victims as witnesses. None of these victims came to the roadshows for spiritual guidance; rather, all of them testified that they came to invest money, not because Hall was a pastor, but because they wanted to "double their money." The government did not even present evidence that Hall spoke of the gifting program to church members during regular church services, much less evidence that even one church member was a victim of his fraud. Now the government asks this Court to assume that at least one of the victims was a member of Hall's church and considered Hall to be his pastor. We decline to assume facts



that the government had ample opportunity to establish during either trial or sentencing. When these victims decided to invest their money, they trusted that this was a legitimate investment program as represented by the directors, including Hall; however, this relationship between Hall and his victims is no different than the relationship that exists in every successful fraud. *See id.* at 838. With respect to the victims that the government presented, there was no personal trust relationship with Hall so as to place him in a position of trust under the Sentencing Guidelines, and therefore the two-level enhancement under U.S.S.G. § 3B1.3 was in error. We are therefore obliged to vacate the sentence imposed and remand for resentencing.

AFFIRMED in part; REVERSED in part; Sentence Vacated and remanded for resentencing.

**APPENDIX B**

AO 245B (Rev 3/01) Sheet 1 – Judgment in a Criminal Case

*UNITED STATES DISTRICT COURT*
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

AMENDED JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

CASE NUMBER: 8:99-CR-78-T-27MSS

vs.

HA YWOOD EUDON HALL,
a/k/a DON HALL

Defendant's Attorney: Sharon Samek

THE DEFENDANT:
__ pleaded guilty to count(s).

__ pleaded nolo contendere to count(s) which was accepted by the court.

X was found guilty on count(s) 1,2, 4,6, and 7 after a plea of not guilty.



**Accordingly**, the court has adjudicated that the defendant is guilty of the following offense(s):

| TITLE & SECTION | NATURE OF OFFENSE | DATE OFFENSE CONCLUDED | COUNT NUMBERS |
|---|---|---|---|
| 18 § 371 | Conspiracy to Commit Mail Fraud, Wire Fraud, and To Transport Property Taken by Fraud Across State Lines | 1/99 | One |
| 18 § 1956(h) | Conspiracy to Commit Money Laundering | 1/99 | Two |
| 18 § 1341 | Mail Fraud | 10/15/96 | Four |
| 18 § 1341 | Mail Fraud | 11/13/97 | Six |
| 18 § 1341 | Mail Fraud | 5/14/98 | Seven |

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and the Mandatory Victims Restitution Act of 1996.

X The defendant has been found not guilty on count(s) 3, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17.

____ Count(s) (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.: 266-66-3819

Defendant's Date of Birth: 04/15/41
Defendant's USM No.: 38296-018
Defendant's Mailing Address: c/o U.S. Marshal
Defendant's Residence Address: c/o U.S. Marshal

Date of Imposition of Sentence: 08/09/01

JAMES D. WHITTEMORE
UNITED STATES DISTRICT JUDGE

DATE: November 5, 2001



AO 245B (Rev 3/01) Sheet 2 – Imprisonment

Judgment-Page 2 of 6

Defendant: HAYWOOD EUDON HALL,
a/k/a DON HALL
Case No.: 8:99-CR-78-T-27MSS

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **ONE HUNDRED EIGHTY-FIVE (185) MONTHS. Said term consists of SIXTY (60) MONTHS as to Counts 1, 4, and 6 - CONCURRENT; SIXTY (60) MONTHS as to Count 7 - CONSECUTIVE to Counts 1,4, and 6; SIXTY-FIVE (65) MONTHS as to Count 2 - CONSECUTIVE to Counts 1, 4, 6, and 7.**

X The court makes the following recommendations to the Bureau of Prisons: The Court recommends confinement at a facility as close to his family as possible.

X The defendant is remanded to the custody of the United States Marshal.

__ The defendant shall surrender to the United States Marshal for this district.
__ at __ a.m./p.m. on ___.
__ as notified by the United States Marshal.

__ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.
__ before 2 p.m. on___.
__ as notified by the United States Marshal.
__ as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____at _____, with a certified copy of this judgment.

_____

United States Marshal

By:_____

Deputy Marshal



AO 245B (Rev. 3/01) Sheet 3 - Supervised Release



Defendant: HAYWOOD EUDON HALL,
a/k/a DON HALL
Case No.: 8:99-CR-78-T-27MSS

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **THREE (3) YEARS as to Counts 1, 2, 4, 6, and 7 - CONCURRENT**.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance.

*For offenses committed on or after September 13, 1994*:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

X The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

## STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and fllow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or



administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

AO 245B (Rev 3/01) Sheet 3a – Supervised Release

Judgment - Page 4 of 6

Defendant: HAYWOOD EUDON HALL,
a/k/a DON HALL
Case No.: 8:99-CR-78-T-27MSS

**SUPERVISED RELEASE**

The defendant shall also comply with the following additional conditions of supervised release:

___ The defendant shall participate in the Home Detention program for a period of ___. During this time, defendant will remain at defendant's place of residence except for employment and other activities approved in advance by the defendant's Probation Officer. Defendant will be subject to the standard conditions of Home Detention adopted for use in the Middle District of Florida, which may include the requirement to wear an electronic monitoring device and to follow electronic monitoring procedures specified by the Probation Officer. Further, the defendant shall be required to contribute to the costs of services for such monitoring not to exceed an amount determined reasonable by the Probation Officer based on ability to pay (or availability of third party payment) and in conformance with the Probation Office's Sliding Scale for Electronic Monitoring Services.

___ The defendant shall participate, as directed by the Probation Officer, in a program (outpatient and/or inpatient) for treatment of narcotic addiction or drug or alcohol dependency. This program may include testing for the detection of substance use or abuse.



Further, the defendant shall be required to contribute to the costs of services for such treatment not to exceed an amount determined reasonable by the Probation Officer's Sliding Scale for Substance Abuse Treatment Services.

___ The defendant shall participate as directed in a program of mental health treatment approved by the Probation Officer. Further, the defendant shall be required to contribute to the costs of services for such treatment not to exceed an amount determined reasonable to by Probation Officer based on ability to pay or availability of third party payment and in conformance with the Probation Office's Sliding Scale for Mental Health Treatment Services.

_X_ The defendant shall be prohibited from incurring new credit charges, opening additional lines of credit, acquisitions or obligating himself for any major purchases without approval of the probation officer.

_X_ The defendant shall provide the probation officer access to any requested financial information.

_X_ The defendant shall perform 400 hours of community service during each year of supervision on such terms as directed by the probation officer. This community service may be substituted on an hourly basis for gainful employment where he is paid a wage, other than in the capacity of minister, pastor, or other religious leader.

_X_ The defendant shall refrain from engaging in any employment related to financial investing involving charitable or religious causes without the express permission of the probation officer.

AO 245B (Rev 3/01) Sheet 5, Part A - Criminal Monetary Penalties



Defendant: HAYWOOD EUDON HALL,
a/k/a DON HALL
Case No.: 8:99-CR-78-T-27MSS

**CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

| | Assessment | Fine | Total Restitution |
|---|---|---|---|
| **Totals:** | **$500.00** | **$ Waived** | **$85,030,412.00** |

___ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order of percentage payment column below. However, pursuant to 18 U. S. C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.



| Name of Payee | Amount of Restitution Ordered |
|---|---|
| Victims Identified in Court Exhibit #1 | $85,030,412* |

*To be made jointly and severally with co-defendants Gerald Payne, Betty Payne, Patrick Talbert, and David Whitfield.

To the extent that any victim receives compensation as a result of the bankruptcy proceedings, each victim's loss amount shall, for purposes of this Order of restitution, be reduced by the amount so recovered, pursuant to 18 U.S.C. §3664(f)(2)(A).

(See Court's Order dated November 5, 2001, attached)

___ If applicable, restitution amount ordered pursuant to plea agreement $ _____ .

___ The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

___ The court determined that the defendant does not have the ability to pay interest, and is ordered that;

___ the interest requirement is waived for the ___ fine and/or ___ restitution.

___ the interest requirement for the ___ fine and/or ___ restitution is modified as follows:

* Findings for the total amount of losses are required under

Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994, but before April 23, 1996.



AO 245B (Rev 3/01) Sheet 5, Part B - Criminal Monetary Penalties



Defendant: HAYWOOD EUDON HALL,
a/k/a DON HALL
Case No.: 8:99-CR-78-T-27MSS

**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A. ___ Lump sum payment of $ __ due immediately, balance due
__ not later than _____, or
__ in accordance with __ C, __ D, or __ E below; or

B. ___ Payment to begin immediately (may be combined with __ C, __ D, or __ E below); or

C. ___ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $ _____ over a period of ____ (e. g., months or years), to commence _____ days (e. g., 30 or 60 days) after date of this judgment; or

D. ___ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $ _____ over a period of ____, (e. g., months or years), to commence _____ days (e. g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E. _X_ Special instructions regarding the payment of criminal monetary penalties: The defendant shall

immediately begin making nominal payments pursuant to 18 U.S.C. §3664(f)(3)(B) and shall participate In the Bureau of Prisons' Inmate Financial Responsibility Program.

Unless the court has expressly ordered otherwise in the special instruction above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States Attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

___ Joint and Several
Defendant Name, Case Number, and Joint and Several Amount:

___ The defendant shall pay the cost of prosecution.

___ The defendant shall pay the following court cost(s):

___ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.